

HOUSE BILL No. 1341

DIGEST OF INTRODUCED BILL

Citations Affected: IC 23-17-4; IC 30-4-3-27.

Synopsis: Cy pres; trusts and public benefit corporations. Allows a court (under the cy pres doctrine) to prevent failure of a public benefit corporation that has substantially changed its purpose by directing property donated to the corporation to another charitable purpose consistent with the donor's general intent to devote the property to general charitable purposes. Provides that the following may bring an action under the cy pres doctrine against a trust for a benevolent public purpose or a public benefit corporation: (1) The settlor of the trust. (2) A beneficiary of the trust or corporation. (3) The attorney general. (4) A donor to a trust or corporation if the donor has contributed at least \$1,000 to the trust or corporation and the trust or corporation has solicited and received more than \$25,000 in public donations or public contributions. (5) A beneficiary of the corporation. (6) A taxpayer of a governmental entity that has provided more than \$500,000 in tax subsidies, tax credits, or tax exemptions to the trust or charitable nonprofit corporation. Allows a living heir of a donor of a charitable contribution to a trust or corporation to present evidence of the intent of the donor.

Effective: July 1, 2006.

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January 12, 2006, read first time and referred to Committee on Judiciary.

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Introduced

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

HOUSE BILL No. 1341

A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 23-17-4-4 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) Except as
3 provided in subsection (b) **and section 4.1 of this chapter**, the validity
4 of corporate action may not be challenged on the ground that the
5 corporation lacks or lacked power to act.

6 (b) A corporation's power to act may be challenged in a proceeding
7 against the corporation for a declaratory judgment or to enjoin an act
8 where a third party has not acquired rights. The proceeding may be
9 brought by the attorney general or a director.

10 SECTION 2. IC 23-17-4-4.1 IS ADDED TO THE INDIANA CODE
11 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
12 1, 2006]: **Sec. 4.1. The following may bring an action against a
13 public benefit corporation under the cy pres doctrine as set forth
14 in IC 30-4-3-27:**

15 (1) **The attorney general.**

16 (2) **A donor, if:**

17 (A) **the donor has contributed at least one thousand dollars**

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(S1,000) to the public benefit corporation; and

(B) the public benefit corporation has solicited and received public donations or public contributions of more than twenty-five thousand dollars (\$25,000).

(3) A taxpayer of the governmental entity that provided the public benefit corporation with a tax subsidy, tax credit, or tax exemption, if the public benefit corporation has received more than five hundred thousand dollars (\$500,000) in direct or indirect income or property tax subsidies, credits, or exemptions from the governmental entity.

SECTION 3. IC 30-4-3-27, AS AMENDED BY P.L.238-2005, SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 27. (a) **This subsection applies** if property is given to a trust for a benevolent public purpose ~~and or~~ **a public benefit corporation (as defined in IC 23-17-2-23). If:**

(1) the property **that is given to the trust or corporation** is to be applied to a particular charitable purpose; ~~and~~

(2) it is or becomes impossible, impracticable, wasteful, or illegal to carry out the particular **charitable** purpose; and

(3) if the settlor **or donor** manifested a more general intention to devote the property to charitable purposes;

the trust **or corporation** need not fail, but the court may direct the application of the property to some charitable purpose which falls within the general charitable intention of the settlor **or donor**.

(b) **This subsection applies if property is given to a public benefit corporation. If:**

(1) the corporation has substantially changed the corporation's purpose; and

(2) the donor manifested a more general intention to devote the property to charitable purposes;

the corporation need not fail, but the court may direct the application of the property to some charitable purpose that falls within the general charitable intention of the donor.

(c) An action may be brought against a trust for a benevolent public purpose or a public benefit corporation under this section by the following:

(1) The settlor of the trust.

(2) A beneficiary of the:

(A) trust; or

(B) corporation.

(3) The attorney general.

(4) A donor to the trust or corporation, if:

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- 1 (A) the donor has contributed at least one thousand dollars
 2 (\$1,000) to the trust or corporation; and
 3 (B) the trust or corporation has solicited and received
 4 public donations or public contributions of more than
 5 twenty-five thousand dollars (\$25,000).
 6 (5) A taxpayer of the governmental entity that provided the
 7 trust or corporation with a tax subsidy, tax credit, or tax
 8 exemption if the trust or corporation has received more than
 9 five hundred thousand dollars (\$500,000) in direct or indirect
 10 income or property tax subsidies, credits, or exemptions from
 11 the governmental entity.
 12 ~~(b)~~ (d) The terms of a charitable trust that would result in the
 13 distribution of the trust property to a noncharitable beneficiary prevails
 14 over the power of the court under subsection (a) to apply the cy pres
 15 doctrine to modify or terminate the trust only if, when the provision
 16 takes effect:
 17 (1) the trust property is to revert to the settlor and the settlor is
 18 still alive; or
 19 (2) less than twenty-one (21) years have elapsed since the trust
 20 was created.
 21 ~~(c)~~ (e) A living heir of the settlor, **a living heir of a donor of a**
 22 **charitable contribution to a public benefit corporation or a trust**
 23 **for a benevolent public purpose**, or a living beneficiary named in the
 24 original trust agreement **of a trust for a benevolent public purpose**
 25 may present evidence to the court of:
 26 (1) the heir's or beneficiary's opinion of the settlor's **or donor's**
 27 intent; and
 28 (2) the heir's or beneficiary's wishes;
 29 regarding the property given in trust **or to the corporation.**
 30 (f) **This section does not limit any rights granted under common**
 31 **law.**

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